IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1281 OF 2007

IN

APPEAL NO. 1085 OF 2000

IN

SUIT NO. 877 OF 1981

The Cotton Corporation of India .. Appellants

(Org. Plaintiffs)

Versus

Bangodaya Cotton Mills Limited. ..Respondents

(Org. Defendants)

Mr. Rajesh Shah i/b. Divekar & Co. for the appellants.

Mr. P.A.Sawant i/b. Joy Legal Consultants for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA,JJ.

DATE : 13th August, 2007.

P.C.

1. The Chamber Summons has been taken out in the Appeal by the original plaintiffs-appellants. The Appeal is directed against the order dated 15th September, 2000 passed by a learned Single Judge of this Court in Suit No.877 of 1981. That Civil Suit was filed by the present appellant seeking money decree against

the defendants. The money decree was for damages suffered by the plaintiffs.

2. Perusal of the Judgment of the learned Single Judge shows that the learned Single Judge answered all the issues in favour of the plaintiffs except one i.e. issue No.2. The learned Single Judge, by recording finding on issue No.2, held that the suit is barred by the law of limitation.

3. In this Appeal, Chamber Summons No.1281 of 2007 has been taken out by the plaintiffs for permission to amend the plaint. Perusal of the proposed amendment shows that the plaintiffs now want to plead that the cause of action has accrued to the plaintiffs when the plaintiffs suffered loss when the cotton was re-sold. Therefore, according to the plaintiffs, the suit is within the period of limitation.

4. The learned Counsel appearing for the defendants-respondents, on the other hand, submits that firstly, the plea raised by the plaintiffs by amendment is also barred by the law of limitation. He also submits that this plea could have been taken by the plaintiffs in the plaint itself and, therefore, there is no justification for permitting the plaintiffs to amend the plaint in the appeal.

5. Insofar as the first objection raised on behalf of the respondents is concerned, in our opinion, it will not be appropriate for us to decide the question whether the plea raised by the amendment now itself is barred by the law of limitation. In our opinion, that question can be left open to be raised before the learned Single Judge in view of the order that we propose to make.

6. So far as the second objection is concerned, it is true that the plea now being raised is based on the terms in the contract which were within the knowledge of the plaintiffs and, therefore, it was possible for the plaintiffs to raise this plea in the plaint itself. However, the fact remains that all the findings have been recorded in favour of the plaintiffs by the learned Single Judge and the only finding against the plaintiffs is that the suit is barred by the law of limitation. The plaintiffs are also willing to pay costs to the defendants-respondents for making the application for amendment in the plaint at the stage of appeal.

7. In our opinion, considering the facts and circumstances of the case, and also that the plaintiffs are a Government of India Undertaking, therefore, the money involved is public money, the amendment sought deserves to be granted. In our opinion, the following

order would meet the ends of justice :-

(i) Chamber Summons No.1281 of 2007 is granted in terms of prayer clause (a). It is made clear that the question whether the plea now being incorporated by amendment itself is barred by limitation is left open to be raised by the defendants. Amendment to be carried out within a period of two weeks from today.

(ii) The appellants shall pay as and by way of costs of the Chamber Summons Rs.10,000/-. Payment of costs is a condition precedent. Costs to be paid before carrying out amendment in the plaint.

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)

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1. As we have permitted the plaintiffs to amend the plaint by order passed today in Chamber Summons No.1281 of 2007 and as the plea raises a question which, though

not purely a question of fact, nevertheless is a mixed question of law and facts, in view of the amendment, the finding recorded by the learned Single Judge in the order impugned in the Appeal that the suit of the plaintiffs is barred by the law of limitation will have to be set aside. It is accordingly set aside.

2. Suit No.877 of 2000 is remitted back to the learned Single Judge for trying the issue No.2 afresh after granting the defendants an opportunity to amend their written statement and thereafter granting the parties an opportunity to lead evidence, both documentary and oral

3. So far as the finding recorded on issues other than the issue No.2 are concerned, as observed above, they are in favour of the appellants. Therefore, there is no question of disturbing those findings at this stage. The respondents have also not filed any petition or cross appeal against the findings because the ultimate decision in the suit was in favour of the defendants. Therefore, it is made clear that in case the learned Single Judge holds that the suit of the plaintiffs is within the period of limitation, the defendants shall be entitled to challenge, apart from the finding to be recorded by the learned Single Judge on the question of limitation, the other findings that have already been recorded against them. Appeal disposed of. No order

as to costs.

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(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)